

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

MELVIN LOWE,

Plaintiff,

-vs-

MONTGOMERY COUNTY BOARD
OF EDUCATION, *et al.*,

Defendants.

}

Case No. 2:05-cv-495-WKW

DEFENDANTS' MOTION TO STRIKE
PLAINTIFF'S OBJECTION TO DEFENDANTS' REPLY BRIEF,
OR IN THE ALTERNATIVE,
MOTION FOR LEAVE TO FILE RESPONSE

COME Now the Montgomery County Board of Education, the individual Board members and the Superintendent, Defendants in the above-styled cause, and file this Motion to Strike Plaintiff's Objection to Defendants' Reply Brief, or in the alternative, Motion for Leave to File a Response. In support thereof, Defendants state as follows:

1. By Order dated April 6, 2006, this Honorable Court ordered that this matter would be submitted on summary judgment briefs on May 10, 2006, with Plaintiff permitted to file a responsive brief and Defendants permitted to file a reply brief.¹
2. On June 2, 2006, Plaintiff filed a 4-page Objection to Defendants' Reply Brief objecting to arguments made in said Reply Brief.²
3. Neither this Court's Orders nor, to the undersigned counsel's knowledge, traditional practice provide for additional briefing of this sort, irrespective of the title of the document.
4. As this Court may be aware, the briefing in this matter has been unusually voluminous and the undersigned wishes to avoid engaging in a volley of "objections" and responsive filings, particularly without the consent of the Court. Accordingly, the Defendants ask that the

¹Upon Plaintiff's uncontested motion and by Order dated May 9, 2006, the time for filing responsive briefs was extended to May 12, 2006.

²This document was replaced by a corrected version on June 6, 2006.

Plaintiff's Corrected Objection to Defendants' Reply Brief be stricken from the record and that the briefs be deemed submitted as of May 12, 2006.

5. However, should this Court deny the Defendants' Motion to Strike, Defendants respectfully request the opportunity to file a brief response to Plaintiff's Objection.

THE FOREGOING PREMISES CONSIDERED, Defendants respectfully move this Court to strike Plaintiff's Corrected Objection to Defendants' Reply Brief, or in the alternative, grant Defendants' leave to file a response to same.

Respectfully Submitted this the 5th day of June, 2006.

MONTGOMERY COUNTY BOARD OF
EDUCATION, VICKIE JERNIGAN, MARK
LABRANCHE, TOMMIE MILLER, MARY
BRIERS, DAVE BORDEN, HENRY A.
SPEARS, BEVERLY ROSS, and
DR. CARLINDA PURCELL, Defendants,

By: /S/ James R. Seale

James R. Seale (3617-E-68J)
Elizabeth Brannen Carter (3272-C-38-E)
Jayne Harrell Williams (6544-Y-85H)
HILL, HILL, CARTER,
FRANCO, COLE & BLACK, P.C.
Post Office Box 116
Montgomery, Alabama 36101-0116
(334) 834-7600
(334) 263-5969 - fax
E-mail: jrs@hillhillcarter.com
E-mail: ecartier@hillhillcarter.com
E-mail: jhwilliams@hillhillcarter.com
Counsel for Defendants
www/6630.0157/f:Motion to Strike.wpd

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date electronically filed the foregoing *Defendants' Motion to Strike Plaintiff's Objection to Defendants' Reply Brief, or in the alternative, Motion for Leave to File Response* with the Clerk of the Court for the United States District Court, for the Middle District of Alabama, using the CM/ECF system which will send notification of such filing to: William F. Patty, Esquire (bpatty@beersanderson.com) this the 5th day of June, 2006.

/S/ James R. Seale